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From: Kevin Greif
1140 N. Opal Drive
Prescott, AZ 86303

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To: The Commissioners
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

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Arizona Corporation Commission

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September 19, 2008

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IN THE MATTER OF THE APPLICATION OF DIAMOND VALLEY WATER USERS CORPORATION FOR APPROVAL OF A REQUEST OF THE DIAMOND VALLEY WATER DISTRICT TO OBTAIN THE ASSETS OF THE DIAMOND VALLEY WATER USERS CORPORATION.

DOCKET No. W-03263A-07-0244

REQUEST FOR REHEARING ON DECISION NO. 70483 OF SEPTEMBER 3, 2008

The ACC has failed to provide the information required for the cancellation of the DVWUC Certificate of Convenience and Necessity (CC&N). The failure of the Commission to meet its own procedural standard is arbitrary and capricious. The ACC requires that the utility requesting the cancellation of the CC&N state if customer security deposits have been refunded and if they are not to be refunded prior to the closing who will be responsible refunding these deposits. The ACC also requires that Mainline Extension Agreements as well as meter and service line installation deposits are either refunded at closing or that the obligations will be transferred. This information has not been provided. The failure of the ACC to adhere to its own procedures is arbitrary and capricious.

Mr. James Morgan asked at the hearing if there were liabilities associated with deposits that would be transferred to the Diamond Valley Water District. The question was not answered. Commissioner Mayes stated that the visit by staff to the offices of the interim manager of Diamond Valley Water Users Corporation indicated adequate diligence by the Commission in the determination of the deposit liabilities of the utility. The staff report states that there may be undisclosed deposit liabilities. Who is responsible and the amount outstanding has yet to be determined.

The ACC legal department is in possession of financial records from the previous interim manager, Bradshaw Management Corporation, that show outstanding customer security deposits, advances in aid of construction contributions, advanced in aid of construction and mainline extensions deposits. Staff did not review these records during the recent audit. There are numerous deposit liabilities that have not been reported in any findings related to this decision. One Commissioner at the recent hearing suggested that this would not be a problem because customers would be unlikely to pursue legal action in court to recover their deposits. So rather than protect the interests of the utility customers the Commission is willing to use the cumbersome legal process to impede the ability of the utility consumer to get their deposits back.

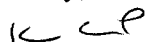
While this approach may be expedient it does not serve the mission of the ACC as a regulatory body or comply with Arizona law.

There is nothing in the Order NO. 70483 that states that the liabilities are being transferred to the DVWD. The legislation that enables this transfer of utility assets does not authorize the transfer of liabilities. Since the DVWD is not liable for the refunding these deposits the responsible party should be identified.

The records of DVWUC have yet to be transferred to the DVWD and there is no requirement in Decision NO. 70483 that this occur. The records should be preserved and the DVWD is the appropriate custodian for these records.

The ACC order for the Transfer of Assets of Diamond Valley Water Users Corporation to the Diamond Valley Water District should require that the System Improvement Surcharge fund has or will be audited as required by Commission Decision No. 68389 and that these funds are transferred to DVWD. The order should also insure that Mr. Bohlier has or will reimburse DVWUC for the additional software purchased using DVWUC funds in 2007.

Sincerely,



Kevin Greif

cc:

Arizona Corporation Commission (13)
Docket Control
1200 W. Washington Street
Phoenix, AZ 85007

Don Bohlier
Diamond Valley Water Users Corporation
PO Box 13070
Prescott, AZ 86403

Diamond Valley Water District
1848 Emerald Drive
Prescott, AZ 86301